IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3468 OF 1987

1. Shrikrishna Balvant Rashinkar,)
since deceased by heirs and)
legal representatives :)

1-a. Pramod Shrikrishna Rashinkar,)
age about 30 years,)
Occ: Business, R/o.286/288,)
At & Post Mangalwar Peth,)
Solapur - 413002.)

1.B. Rajiv Shrikrishna Rashinkar,)
R/o.286/288, Mangalwar Peth,)
Solapur.)

2. Bhalchandra Balvant Rashinkar,)
age 49, Occ:- Business,)
residing at 286,)
West Mangalwar Peth, Solapur.)..Petitioners
(Org.Plaintiffs)

Versus

1. Advyappa Virbhadrappa Birajdar,)
age 63 years, Occ: Business,)
residing at 898,)
West Mangalwar Peth,)
Solapur.)..Respondent.
(Org.Defendant)

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Shri G.S.Godbole for the petitioners.

Shri Surel S. Shah for the respondent.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 29th November, 2004.

ORAL JUDGMENT:

1. Heard the learned advocates for the parties.

Perused the records.

2. The judgment and orders passed by the Courts below dismissing the suit and the appeal in relation to the eviction suit which was filed by the petitioners on the ground of default in payment of rent is sought to be assailed on the ground that the findings arrived at pertaining to the payment of rent by the respondent and absence of default in payment of such rent are contrary to the materials on record, and therefore, to be perverse and hence warrant interference in exercise of writ jurisdiction.

3. Few facts relevant for the decision are that, the petitioners had issued the notice under Section 12(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter called as "the said Act", on 1st February, 1977 to the respondent calling upon him to pay the arrears of rent for the period from 14th November, 1974 to 19th January, 1977 amounting to Rs.1562.88ps., after deducting therefrom a sum of Rs.722.50ps. already deposited in the Court in the earlier eviction proceedings and thereby the amount of arrears being due and payable to the tune of Rs.860.38ps. On account of failure to pay the same and to file an application under Section 11(3) of the

said Act within a period of 30 days, the petitioners initiated the eviction proceedings on 1st April, 1977 being Regular Civil Suit No.403/77. The suit was contested by the respondent by filing the Written Statement on 27th October, 1977 contending that no rent was due and payable. On 10th July, 1979, it was the first date of the hearing of the suit, in the sense, that it was a date on which the issues were framed in the suit. The matter thereafter proceeded for recording of evidence and by the judgment dated 28th July, 1982, the trial Court dismissed the suit holding that on the date when the notice was issued, no rent was due an payable, and therefore, there was no case for ordering eviction of the respondent from the suit premises. The matter was carried in appeal being Civil Appeal No.44 1983 which came to be dismissed by the impugned judgment and order dated 2nd August, 1986 holding that the respondent had deposited the entire dues on the first date of hearing of the matter and that he had continued to deposit the rent year to year, and therefore, there was no case for eviction of the respondent from the suit premises.

4. It is to be noted that the Courts below have clearly arrived at the finding that the rent was payable yearly, and undisputedly, there is no material

on record to find fault with the said finding. Referring to the analysis of the evidence on record by the Courts below, it is sought to be contended that after considering the amount of rent that has been deposited by the respondent in the Court till 10th July, 1979, there was still certain amount of rent due and payable and according to the learned advocate, it was more than Rs.400/- which was due and payable on that date and there was no scope for arriving at the finding that the respondent had complied with the requirement of Section 12(3)(b) of the said Act on the first date of hearing so as to give an advantage of the said provision to the respondent and to dismiss the suit for eviction filed against him.

5. The learned advocate for the respondent, on the other hand, while referring to the impugned judgments and orders, has submitted that the judgments and orders apparently disclose that the findings arrived at based on the materials on record and the purshis filed by the learned advocate for the petitioners themselves before the lower appellate Court, would reveal that on the first date of hearing of the matter i.e. 10th July, 1979, the respondent did not owe any arrears of rent as such to the petitioners.

6. The findings arrived at by the Courts below as well as the materials on record apparently reveal that on the day when the notice dated 1st February, 1977 was issued to the respondent by the petitioners, a sum of Rs.860.38 ps. was demanded towards the arrears of rent till 19th January, 1977. It further discloses that a sum of Rs.974.08 ps. was deposited in the Court on 28th June 1977. The purshis was filed by the learned advocate for the petitioners in the District Court, which is on record of the District Court at Exhibit-42, further discloses that on 16th February, 1979 a sum of Rs.1193.42 ps. was deposited which was acknowledged by the receipt issued from the book of the receipts bearing Sr.No.3731. It is pertinent to note that the Appellate Court had clearly relied upon the said purshis and the admission in that regard in the said purshis was that the amount of Rs.1193.42 ps. was deposited. Though the learned advocate for the petitioners has sought to contend that there was no evidence produced in the form of receipt or in any other form to corroborate the said claim regarding the deposit of Rs.1193.42ps., however, no such contention can be entertained in this petition as the advocate appearing for the petitioners themselves had admitted the said fact in writing before the lower appellate

Court before disposal of the appeal and there was no specific ground taken in the Memo of the Petition contending that the advocate for the petitioners was not instructed to make any such concession or admission before the lower appellate Court by the petitioners. In fact, no grievance appears to have been made by the petitioners in that regard in the Memo of Writ Petition filed in this Court. In the facts and circumstances of the case therefore, it has to be held that the respondent had in fact deposited a sum of Rs.1193.42 ps. Taking into consideration the amounts deposited during the period from 19th January, 1977 till 10th July, 1979 being Rs.974.08 ps. plus Rs.1193.42 ps. amounting to total sum of Rs.2167.50 ps., was paid. Now as regards the dues which were payable for the said period, undisputedly, the finding of the Court below is that the rent was payable annually. Considering the same, the rent which was due after 19th January, 1977 and prior to 10th July, 1979 was for a period of two years viz. 1977-1978 and 1978-79. The sum of Rs.860.38ps. was demanded by the notice dated 1st February, 1977. The total amount was due and payable on 10th July, 1979 was Rs.2321.50 ps. The amount of Rs.1167.50ps. was already paid. In other words, Rs.1154/- was still due and payable on 10th July, 1979.

7. Section 12(3)(a) of the said Act refers to the cases where the rent is payable by month and in other cases, the provision attracted is under clause (b) of Section 12(3) and it provides that "no decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, on the first date of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and together with simple interest on the amount of arrears of such standard rent and permitted increases at the rate of nine percent per annum; and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the Court." Referring to this clause, the Apex Court in **Ganpat Ladha v. Sashikant Vishnu Shinde,** reported in AIR 1978 SC 955 has held thus:-

> 11. It is clear to us that the Act interferes with the landlord’s right to property and freedom of contract only for the limited purpose of protecting tenants from misuse of

the landlord's power to evict them, in these days of scarcity of accommodation, by asserting his superior rights in property or trying to exploit his position by extracting too high rents from helpless tenants. The object was not to deprive the landlord altogether of his rights in property which have also to be respected. Another object was to make possible eviction of tenants who fail to carry out their obligation to pay rent to the landlord despite opportunities given by law in that behalf. Thus, S.12(3)(a) of the Act makes it obligatory for the Court to pass a decree when its conditions are satisfied as was pointed out by one of us (Bhagwati,J.) in Ratilal Balabhai Nazar v. Ranchodbhai Shankerbhai Patel, AIR 1968 Guj 172. If there is statutory default or neglect on the part of the tenant, whatever may be its cause, the landlord acquires a right under S.12 (3)(a) to get a decree for eviction. But where the conditions of S.12(3)(a) are not satisfied, there is a further opportunity given to the tenant to protect himself against eviction. He can comply with the conditions set out in S.12(3)(b) and defeat the landlord's claim for

eviction. If, however, he does not fulfil those conditions, he can not claim the protection of S.12(3)(b) and in that event, there being no other protection available to him, a decree for eviction would have to go against him. It is difficult to see how by any judicial valour discretion exercisable in favour of the tenant can be found in S.12(3)(b), even where the conditions laid down by it are satisfied, to be strictly confined within the limits prescribed for their operation. We think that Chagla, C.J., was doing nothing less than legislating in Kalidas Bhavan's case ((1958) 60 Bom LR 1359) (supra), in converting the provisions of S.12(3)(b) into a sort of discretionary jurisdiction of the Court to relieve tenants from hardship. The decisions of this Court referred to above, in any case, make the position quite clear that S.12(3)(b) does not create any discretionary jurisdiction in the Court. It provides protection to the tenant on certain conditions and these conditions have to be strictly observed by the tenant who seeks the benefit of the section. If the statutory provisions do not go far enough to

relieve the hardship of the tenant the remedy lies with the legislature. It is not in the hands of Courts."

8. In the circumstances, it is apparent that the rent which was due and payable as arrears on 10th July, 1979 was Rs.1154/-, Section 12(3)(b) does not create any discretionary jurisdiction in the Court and the protection provided to the tenant on account of non-compliance of the conditions thereof would stand withdrawn, and obviously, it calls for consequences which are bound to follow on account of such breach of the conditions by the tenant. The Apex Court has clearly held that in such a case, the court does not have any discretionary jurisdiction and statutory provisions which do not make any concession on the ground of hardship cannot justify any leniency in favour of the tenant in such circumstances. Being so, once it was clear from the records that the respondent had failed to deposit the entire amount due and payable on the first date of hearing of the suit and the respondent still was in default in payment of rent of Rs.1154/- on the said date, consequently in view of the provisions of Section 12(3)(b) of the said Act, the petitioners were justified in contending that they were entitled for an order of eviction against the

respondent from the suit premises. Being so, the findings arrived at by the Courts below regarding the availability of the benefits under Section 12(3)(b) to the respondent is totally contrary to the materials on record as also the finding regarding absence of dues to the petitioners by the respondent which was arrived at by the trial Court.

9. The trial Court has held that the notice issued on 1st February 1977 was itself bad in law as it did not describe the amount mentioned in the notice and in the plaint, it has been clarified that it refers to the mesne profit for the period from February, 1975 to March, 1977 whereas, 14th November, 1974 upto 11th February, 1975, it was the rent amount. Bare perusal of the notice itself discloses that the same referred to the arrears of rent for the period from 14th November, 1974 to 19th January, 1977. It is not in dispute that the respondent was inducted in the suit premises as the tenant thereof. It is well settled law that once the initial contract as regards the tenancy is concluded, then such tenant assumes a character of a statutory tenant in view of protection available to such tenants under State Rent Acts. In other words, for the purpose of eviction of a tenant, who is governed by the provisions of the said Act,

does not require termination of tenancy as such and moment there is a ground available for eviction in terms of the provisions of the said Act, the landlord is entitled to initiate necessary proceedings for that purpose. Undoubtedly, in relation to the ground of default, the proceedings for eviction have to be preceded by a valid notice in terms of Section 12(2) of the said Act, however, that is not for the purpose of termination of the tenancy as such, but it is to give an opportunity to the tenant to clear his dues and avoid eviction proceedings on the ground of default. Being so, the claim which can be made by the landlord in relation to the amount payable by the tenant on account of his occupation in the leased premises is of the rent for such premises and not for the mesne profits for such occupation. The question of claim for mesne profits can arise only when the person is in unlawful occupation of the premises. Being so, merely because in the pleadings, the amount was referred to as the mesne profits, nevertheless the claim for arrears can only be by way of rent. Infact in the case in hand, the notice to the respondent was for arrears of rent and it was not for the mesne profits. Different terminology used by the petitioners to describe such claim while filing the plaint would not change the nature of the claim which

was disclosed in the notice itself, that is to say, if the notice of demand was issued for mesne profits and that was subsequently sought to justify as the notice for arrears of rent, certainly no benefit could be obtained by the landlord. The notice will have to be understood by perusal of the notice itself and not by pleadings filed by the parties subsequent to the issuance of the notice. Viewed from this angle, therefore, the finding of the trial Court about invalidating of the notice on the alleged ground that the pleadings in the plaint refer to the claim of arrears of mesne profits cannot be sustained.

10. In the circumstances, therefore, the impugned judgments and orders cannot be sustained and are liable to quashed and set aside, consequently the petition is bound to succeed. Hence, the petition is hereby allowed. The impugned judgments and orders are hereby quashed and set aside. The respondent having failed to comply with the requirements prescribed under Section 12(3)(b) of the said Act is liable to be evicted from the suit premises, consequently the suit for eviction on the ground of default in payment of rent was required to be decreed by the Courts below and is accordingly hereby ordered to be decreed with no order as to costs. The respondent to deliver the

peaceful and vacant possession of the suit premises to the petitioners on or before 31st March, 2005. The trial Court to issue necessary decree in that regard.